

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

ROCHE DIAGNOSTICS CORPORATION,)
ROCHE DIAGNOSTICS OPERATIONS, INC.,)
and CORANGE INTERNATIONAL, LTD.,)

Plaintiffs,)

v.)

Case No. 1:04-CV-00358-LJM-VSS

APEX BIOTECHNOLOGY CORP.,)
HYPOGUARD USA, INC.,)
MEDLINE INDUSTRIES, INC., and)
HOME DIAGNOSTICS, INC.,)

Defendants.)

DECLARATION OF AARON M. RAPHAEL

1. I am an attorney at Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P., which represents defendant Home Diagnostics, Inc. in this action. I am admitted to practice law in the State of Georgia and the District of Columbia.

2. Attached to this declaration as Exhibit 1 is a true and correct reproduction of DX 343, a letter from G. Yahwak to P. Pottgen, dated June 28, 1988, in *Roche Diagnostics Corp. v. Bayer Corp.*, Case No. IP00-C-1103-C-M/S (S.D. Ind.).

3. Attached to this declaration as Exhibit 2 is a true and correct copy of DX 132, Publications Relevant to Med-Chek's patent, in *Roche Diagnostics Corp. v. Bayer Corp.*, Case No. IP00-C-1103-C-M/S (S.D. Ind.).

4. Attached to this declaration as Exhibit 3 are true and correct copies of pages 425-26 (Jan. 30, 2003), 1480-81, 1484-86, 1534-35, 1543-46, 1549-50 (Feb. 6, 2003), and 1925-27 (Feb. 10, 2003) of the Official Reporter's Transcript of Trial Proceedings in *Roche Diagnostics Corp. v. Bayer Corp.*, Case No. IP00-C-1103-C-M/S (S.D. Ind.).

5. Attached to this declaration as Exhibit 4 are true and correct copies of pages 49, 68-69, 77-78 of the Aug. 8, 2002, deposition transcript of George M. Yahwak in *Roche Diagnostics Corp. v. Bayer Corp.*, Case No. IP00-C-1103-C-M/S (S.D. Ind.).

6. Attached to this declaration as Exhibit 5 is a true and correct copy of the Apr. 8, 2003, deposition transcript of Rita M. Rooney in *Roche Diagnostics Corp. v. Bayer Corp.*, Case No. IP00-C-1103-C-M/S (S.D. Ind.).

7. Attached to this declaration as Exhibit 6 are true and correct copies of pages of a copy of the prosecution history of Appln. No. 07/168,295, filed March 15, 1988 (renumbered A1-A34).

8. Attached to this declaration as Exhibit 7 are true and correct copies of pages of a copy of the prosecution history of U.S. Patent No. 5,128,015, issued July 7, 1992 (renumbered B1-B44).

9. Attached to this declaration as Exhibit 8 is a true and correct copy of U.S. Patent No. 5,128,015, issued July 7, 1992.

10. Attached to this declaration as Exhibit 9 are true and correct copies of pages of a copy of the prosecution history of U.S. Patent No. 5,108,564, issued April 28, 1992 (renumbered C1-C12).

11. Attached to this declaration as Exhibit 10 is a true and correct copy of U.S. Patent No. 5,108,564, issued April 28, 1992.

12. Attached to this declaration as Exhibit 11 is a true and correct copy of DX 125, Eastern Analytical Symposium Standard Abstract Form – A New Microchemical Approach to Amperometric Analysis, in *Roche Diagnostics Corp. v. Bayer Corp.*, Case No. IP00-C-1103-C-M/S (S.D. Ind.).

13. Attached to this declaration as Exhibit 12 is a true and correct copy of DX 324, Final Program of Federation of Analytical Chemistry and Spectroscopy Societies 13th Annual

Meeting with Abstract, dated September 28, 1986, in *Roche Diagnostics Corp. v. Bayer Corp.*, Case No. IP00-C-1103-C-M/S (S.D. Ind.).

14. Attached to this declaration as Exhibit 13 is a true and correct copy of Nankai EPO Application 0230472 B1, published August 5, 1987.

15. Attached to this declaration as Exhibit 14 is a true and correct copy of DX 466, a memorandum from K. Pollman and D. Walling to W. Gruber, dated October 13, 1989, in *Roche Diagnostics Corp. v. Bayer Corp.*, Case No. IP00-C-1103-C-M/S (S.D. Ind.).

16. Attached to this declaration as Exhibit 15 is a true and correct copy of DX 570, a letter from M. Kenemore to G. Yahwak, dated October 20, 1989, in *Roche Diagnostics Corp. v. Bayer Corp.*, Case No. IP00-C-1103-C-M/S (S.D. Ind.).

17. Attached to this declaration as Exhibit 16 is a true and correct copy of DX 388, a memorandum from M. Kenemore to K. Pollmann, dated February 12, 1990, in *Roche Diagnostics Corp. v. Bayer Corp.*, Case No. IP00-C-1103-C-M/S (S.D. Ind.).

18. Attached to this declaration as Exhibit 17 is a true and correct copy of DX 382, a letter from M. Kenemore to G. Yahwak, dated October 19, 1989, in *Roche Diagnostics Corp. v. Bayer Corp.*, Case No. IP00-C-1103-C-M/S (S.D. Ind.).

19. Attached to this declaration as Exhibit 18 is a true and correct copy of DX 386, a memorandum from G. Bush to W. Gruber, A. deBruin, D. Walling, R. Schwindt, M. Kenemore, J. Hurrell, and K. Pollman, dated November 16, 1989, in *Roche Diagnostics Corp. v. Bayer Corp.*, Case No. IP00-C-1103-C-M/S (S.D. Ind.).

20. Attached to this declaration as Exhibit 19 are true and correct copies of pages of a copy of the prosecution history of U.S. Patent No. Re 36,268, issued August 17, 1999 (renumbered D1-D29).

21. Attached to this declaration as Exhibit 20 is a true and correct copy of DX 141, a handwritten letter to Paul from J. Talbott, dated May 10, in *Roche Diagnostics Corp. v. Bayer Corp.*, Case No. IP00-C-1103-C-M/S (S.D. Ind.).

22. Attached to this declaration as Exhibit 21 is a true and correct copy of DX 546, a memorandum from P. Pottgen to File, dated November 10, 1989, in *Roche Diagnostics Corp. v. Bayer Corp.*, Case No. IP00-C-1103-C-M/S (S.D. Ind.).

23. Attached to this declaration as Exhibit 22 is a true and correct copy of DX 87, a memorandum from R. Rooney to File, dated March 5, 1990, in *Roche Diagnostics Corp. v. Bayer Corp.*, Case No. IP00-C-1103-C-M/S (S.D. Ind.).

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on this 28th day of June, 2004.

A handwritten signature in cursive script, appearing to read "Aaron J. Paul", is written over a horizontal line.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was filed electronically on the 28th day of June, 2004. Notice of this filing will be sent to the following counsel of record by operation of Court's electronic filing system. Parties may access this filing through the Court's system.

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